

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

Rules Governing Complaints of Judicial Misconduct and Disability

Preface to the Rules

Chapter 16 of title 28 of the United States Code provides a way for any person to complain about a federal judge who the person believes has “engaged in conduct prejudicial to the effective and expeditious administration of the business of the court” or “is unable to discharge the duties of the office by reason of mental or physical disability.” Section 358 of Chapter 16 also permits the judicial councils of the circuits to adopt rules for the processing and consideration of these complaints. These rules have been adopted under that authority.

Complaints are filed with the clerk of the court of appeals on a form that has been prescribed for that purpose. Each complaint is referred first to the chief judge of the circuit, who decides whether the complaint should be investigated. See Section 352 of Chapter 16. (If the complaint is about the chief judge of the circuit, the circuit judge in regular active service next senior in date of commission will review the complaint; see Section 351(c) and Rule 18(f).)

Pursuant to the provisions of Section 352(b), the chief judge will dismiss the complaint if he or she finds the complaint to be: (1) not in conformity with Section 351(a); (2) directly related to the merits of a decision or procedural ruling; or (3) frivolous, lacking sufficient evidence to raise an inference that the misconduct has occurred, or containing allegations which are incapable of being established by objective evidence. The chief judge may also dismiss the complaint when a limited inquiry conducted under Section 352(a) demonstrates that the allegations in the complaint are conclusively refuted by objective evidence. Finally, the chief judge may dismiss the complaint if appropriate action has been taken or action is no longer necessary because of intervening events.

If the complaint is not disposed of in these ways, the chief judge will appoint a special committee to investigate the complaint pursuant to the provisions of Section 353 and Rule 4(e). The special committee makes its report to the Judicial Council of the Eighth Circuit, which decides what action, if any should be taken. The Judicial Council of the Eighth Circuit is a body that consists of the chief judge of the circuit, ten judges of the court of appeals, and ten district judges, all having an equal vote.

The rules provide for review of the decisions of the chief judge. See Sections 352(c) and (d) and Chapter III of these rules. In the event the chief judge appoints a special committee to review the complaint pursuant to Rule 4(e), a judge or complainant aggrieved by the final decision of the judicial council may file a petition for review with the Judicial Conference of the United States. See Section 357 of Chapter 16.

Chapter I

Filing a Complaint

Rule 1.

When to use the Complaint Procedure

(a) Purpose of the procedure. The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges have engaged in conduct that does not meet the standards expected of federal judicial officers or are physically or mentally unable to perform their duties. The emphasis is on the correction of conditions that interfere with the proper administration of justice in the courts.

(b) What may be complained about. The law authorizes complaints about United States Circuit Judges, District Judges, Bankruptcy Judges, or Magistrate Judges who have engaged in “conduct prejudicial to the effective and expeditious administration of the business of the courts” or who are “unable to discharge all of the duties of office by reason of mental or physical disability.”

“Conduct prejudicial to the effective and expeditious administration of the business of the courts” is not a precise term. It includes such things as use of the judge’s office to obtain special treatment for friends and relatives, acceptance of bribes, improperly engaging in discussions with lawyers or parties in the absence of representatives of opposing parties, and other abuses of judicial office. It does not include making wrong decisions – even very wrong decisions – in cases. The law provides that a complaint may be dismissed if it is “directly related to the merits of a decision or procedural ruling.”

“Mental or physical disability” may include temporary as well as permanent disability.

(c) Who may be complained about. The complaint procedure applies to judges of the United States Court of Appeals for the Eighth Circuit, United States District Judges of the ten district courts within the circuit, United States Bankruptcy Judges of the ten districts and United States Magistrate Judges of the ten districts. The circuit includes the Eastern and Western Districts of Arkansas, the Eastern and Western Districts of Missouri, the Northern

and Southern Districts of Iowa, the District of Nebraska, the District of South Dakota and the District of North Dakota and the District of Minnesota.

Complaints about other officials working for the federal courts should be made to their supervisors in the various courts. If such a complaint cannot be resolved at lower levels, it may be referred to the chief judge of the court in which the official is employed. The circuit executive, whose address is 111 S.10th Street, Room 26.235, St. Louis, MO 63102, is sometimes able to provide assistance in resolving this kind of complaint.

(d) Time for filing complaints. A complaint may be filed at any time. However, complaints should not be filed so long after the events in question that the delay will make fair consideration of the matter or accurate determination of the facts impossible.

(e) Limitations on use of the procedure. The complaint procedure is not intended to provide a means of obtaining review of a judge's decision or ruling in a case. Neither the chief judge of the Court of Appeals nor the judicial council of the circuit has the power to change a decision or ruling. Only a court can do that. The complaint procedures may not be used to have a judge disqualified from sitting on a particular case; a motion for disqualification should be made in the case. Also, the complaint procedure may not be used to force a ruling on a particular motion or other matter that has been, in the opinion of the complainant, pending too long. A petition for mandamus can sometimes be used for that purpose.

(f) Abuse of the complaint procedure. If a complainant files frivolous, unfounded, vexatious, harassing, scurrilous, or repetitive complaints, or otherwise abuses the complaint procedure, the judicial council's review panel (as established by Rule 8), upon the request of the chief judge of the circuit and after affording the complainant an opportunity to respond in writing, may restrict or impose conditions upon the complainant's use of the complaint procedure, including requiring the complainant to obtain prior permission of the chief judge of the circuit before filing another complaint.

Rule 2.

How to File a Complaint

(a) Form. Complaints should be filed on the official form for filing complaints in the Eighth Circuit, which is reproduced in the appendix to these rules. Forms may be obtained by writing or telephoning the clerk of the Eighth Circuit at 111 S. 10th Street, Room 24.329, St. Louis, MO 63102 (314-244-2400). Forms may be picked up in person at the St. Louis

55101, or any district court or bankruptcy court clerk's office within the circuit.

(b) Statement of facts. A statement of facts should be attached to the complaint form, setting forth with particularity the facts the claim of misconduct or disability is based on. The statement should not exceed five pages and should be on 8 ½ by 11 inch paper. Normally, the statement of facts will include the following information –

(1) a statement of what occurred;

(2) the time and place of the occurrence or occurrences;

(3) any other information that would assist an investigator in checking the facts, such as the presence of a court reporter or witnesses and their names and addresses.

(c) Legibility. Complaints should be typewritten. If they are handwritten, they must be legible.

(d) Submission of documents. Documents, such as portions of a transcript, may be submitted as evidence of the actions complained about. If they are, the statement of facts should refer to the particular pages in the documents where the relevant material appears.

(e) Number of copies. Only an original of the complaint and the statement of facts is required. The clerk of the court of appeals will make photocopies as required.

(f) Signature and oath. The complaint form must be signed and the truth of the statements verified in writing under oath. As an alternative to taking an oath, the complainant may declare under penalty of perjury that the statements are true. The complainant must provide an address where he or she can be contacted.

(g) Anonymous complaints. Anonymous complaints are not handled under these rules. However, the clerk will forward any anonymous complaint to the chief judge of the court of appeals for such as action as the chief judge considers appropriate. See Rule 20.

(h) Where to file. Complaints should be sent to the Clerk, United States Court of Appeals, 111 S. 10th Street, Room 24.329, St. Louis, MO 63102. The envelope should be marked "Complaint of Misconduct" or "Complaint of Disability." The name of the judge complained about should *not* appear on the envelope.

(i) No fee required. There is no filing fee for a complaint.

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(j) Chief Judge's authority to initiate a complaint. 28 U.S.C. Section 351(b) provides that in the interest of effective and expeditious administration of the business of the

courts and on the basis of information available to the chief judge of the United States Court of Appeals, the chief judge may, by written order stating reasons therefor, identify a complaint and dispense with the filing of a written complaint. A chief judge who acts pursuant to this section is not considered a complainant and, subject to the second sentence of Rule 18(a), will perform all functions assigned to the chief judge under these rules.

Rule 3.

Action by Clerk of Court of Appeals Upon Receipt of a Complaint

(a) Receipt of complaint in proper form.

(1) Upon receipt of a complaint against a judge filed in proper form under these rules, the clerk of the court of appeals will open a file, assign a docket number, and acknowledge receipt of the complaint to the filer. The clerk will promptly send copies of the complaint to the chief judge of the circuit (or the judge authorized to act under rule 18(f)) and to each judge whose conduct is the subject of the complaint. The clerk will retain the original of the complaint.

Upon issuance of a chief judge's order under Rule 2(j), the clerk will process the complaint promptly as otherwise provided by these rules.

(2) If the complaint concerns the conduct of a district judge or magistrate judge, the clerk will also send a copy of the complaint to the chief judge of the district court in which the district judge or magistrate judge holds his or her appointment. If the complaint concerns the conduct of a bankruptcy judge, the clerk will send copies to chief judges of the district court and the bankruptcy court. If the complaint concerns the conduct of a chief district judge or chief bankruptcy judge, the clerk will send a copy of the complaint to the judge of such court in regular active service who is most senior in date of commission among those who are not subjects of the complaint.

(b) Receipt of complaint about an official other than a judge of the Eighth Circuit. If the clerk receives a complaint against an official other than a judge of the Eighth Circuit, the clerk will not accept the complaint for filing and will advise the complainant in writing of the procedures for pursuing such complaints.

(c) Receipt of a complaint about a judge of the Eighth Circuit and another official. If a complaint is received against a judge of the Eighth Circuit and another

official, the clerk will accept the complaint for filing only with regard to the judge and will advise the complainant accordingly.

(d) Receipt of complaint in improper form. If the clerk receives a complaint against a judge of the Eighth Circuit that uses the complaint form but does not comply with the requirements of Rule 2, the clerk will not accept the complaint for filing and will advise the complainant in writing of the appropriate procedures. If a complaint is received in letter form, the clerk will not accept the letter as a complaint and will advise the writer of the procedures for filing a complaint by sending the writer a copy of these rules and the complaint form.

CHAPTER II

Review of a Complaint by the Chief Judge

RULE 4.

Review by the Chief Judge

(a) Purpose of the chief judge's review. When a complaint in proper form is sent to the chief judge by the clerk, the chief judge will review the complaint to determine whether it should be dismissed or concluded on the grounds that the appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events. See 28 U.S.C. Section 352(b)(1) and (2). The chief judge may also refer the matter to a special committee. See 28 U.S.C. Section 353.

(b) Inquiry by the chief judge. In determining what action to take, the chief judge may conduct a limited inquiry for the purpose of determining (1) whether appropriate corrective action has been or can be taken without the need for a formal investigation, (2) whether intervening events have made action on the complaint unnecessary, and (3) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation. See 28 U.S.C. Section 352(a)(1) and (2). For this purpose, the chief judge may request the judge whose conduct is the subject of the complaint to file a written response to the complaint. The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge whose conduct is the subject of the complaint, and any other person who

may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief may not undertake to make findings of fact about any matter that

is reasonably in dispute.

(c) Dismissal. A complaint will be dismissed if the chief judge concludes the complaint to be –

(1) not in conformity with section 351(a);

(2) directly related to the merits of a decision or procedural ruling; or

(3) frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation;

(d) Corrective Action. The complaint proceeding will be concluded if the chief judge determines that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

(e) Appointment of special committees. If the complaint is not dismissed or concluded under sections (c) and (d) of this rule, the chief judge will promptly appoint a special committee consisting of himself or herself and equal numbers of circuit and district judges to investigate the facts and allegations in the complaint. See Rule 9. Ordinarily, a special committee will not be appointed until the judge whose conduct is the subject of the complaint has been invited to respond to the complaint and has been allowed a reasonable time to do so. In the discretion of the chief judge, separate complaints may be joined and assigned to a single special committee; similarly, a single complaint naming more than one judge may be severed and more than one special committee appointed.

(f) Notice of chief judge's actions.

(1) If the complaint is dismissed or the proceeding concluded pursuant to sections (c) and (d) of this rule, the chief judge will prepare a supporting memorandum setting forth the allegations of the complaint and the reasons for the disposition. The memorandum will not include the name of the complainant or the name of the judge whose conduct was complained about. The order and the supporting memorandum will be provided to the complainant, the judge, and any other judge entitled to receive a copy of the complaint pursuant to Rule 3(a)(2). The complainant will also be notified of

the right to petition the judicial council for review of the decision and of the deadline for filing such a petition.

(2) If a special committee is appointed, the chief judge will notify the complainant, the judge whose conduct is the subject of the complaint, and any judge entitled to receive a copy of the complaint pursuant to Rule 3(a)(2) that the matter has been referred to the special committee. The notice will provide the names of the members of the special committee.

(g) Public availability of chief judge's decision. Materials related to the chief judge's decision will be made public as provided in Rule 17.

(h) Report to the judicial council. The chief judge will make regular reports to the judicial council on actions taken under this rule.

(i) Allegations of criminal conduct. If the chief judge dismisses, solely for lack of jurisdiction under 28 U.S.C. Section 352, non-frivolous allegations of criminal conduct by a judge, the chief judge's order of dismissal shall inform the complainant that the decision does not prevent the complainant from bringing any allegation of criminal conduct to the attention of the appropriate federal or state criminal authorities. If, in this situation, the allegations of criminal conduct were originally referred to the circuit by a Congressional committee or member of Congress, the chief judge -if no petition for review of the dismissal is filed within the thirty-day period specified by Rule 6(a) - shall notify the Congressional committee or member that the Judiciary has concluded that it lacks jurisdiction under Section 352.

CHAPTER III

Review of the Chief Judge's Disposition of a Complaint

RULE 5.

Petition for Review of the Chief Judge's Decision

A complainant or judge aggrieved by the final decision of the chief judge under Chapter II of these Rules may petition the Judicial Council of the Eighth Circuit's review panel for review of the decision. The judicial council review panel may affirm the order of order of the chief judge, return the matter to the chief judge for further

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action or refer the matter to the full council for further action. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise. See 28 U.S.C. Sec. 352(c).

RULE 6.

How to Petition for Review of the Chief Judge's Decision on the Complaint

(a) Time for Filing. A petition for review must be received in the court of appeals' clerk's office within thirty days of the date of the clerk's letter to the complainant notifying the complainant of the chief judge's decision.

(b) Form. A petition for review should be in the form of a letter, addressed to the clerk of the court of appeals, beginning, "I petition the judicial council for review of the chief judge's order" There is no need to enclose a copy of the original complaint.

(c) Legibility. Petitions should be typewritten, if possible. If not typewritten, they must be legible.

(d) Number of copies. Only an original is required.

(e) Statement of grounds for the petition. The letter should set forth a brief statements of the reasons why the petitioner believes the chief judge should not have dismissed the complaint or concluded the proceedings. The petition should not repeat the complaint, as the complaint is available to the members of the judicial council.

(f) Signature. The letter must be signed by the complainant.

(g) Where to file. Petitions should be sent to the Clerk of the U.S. Court of Appeals, 111 S. 10th Street, Room 24.329, St. Louis, MO 63102. The envelope should be marked "Misconduct Petition" or "Disability Petition." The name of the judge whose conduct is the subject of the complaint should not appear on the envelope.

(h) No fee required. There is no fee for filing a petition for review.

Rule 7.

Action by the Clerk of the Court of Appeals Upon Receipt of a Petition for Review

(a) Receipt of a timely petition in proper form. Upon receipt of a petition for review of the chief judge's order, the clerk will send each member of the review panel

a copy of the complaint and any response, the chief judge's order dismissing or concluding the proceeding, the petition for review and a ballot. The clerk will also send the same documents, minus a ballot, to the other members of the judicial council except the chief judge. In addition, the clerk will send the petition for review to the chief judge, the circuit executive and the judge whose conduct is complained of.

(b) Receipt of an untimely petition. The clerk will refuse to accept a petition that is received after the deadline established in Rule 6(a).

(c) Receipt of timely petition not in proper form. Upon receipt of a petition filed within the time allowed but not in proper form under these rules (including a document that is ambiguous about whether a petition for review is intended), the clerk will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give the petitioner the opportunity to correct the deficiencies within fifteen days of the date of the clerk's letter or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the clerk will proceed in accordance with the provisions of Rule 7(a). If the deficiencies are not corrected, the clerk will reject the petition.

RULE 8.

Review by the Judicial Council of a Chief Judge's Order

(a) Review panel. Pursuant to the authority of 28 U.S.C. Section 352(d), the judicial council shall designate five members of the judicial council to serve as a review panel. At least two of the members of the review panel shall be district judges. Members of the review panel will serve one year terms. The review panel shall act for the judicial council on all petitions for review of the chief judge's order, except for those petitions referred to the full membership of the judicial council pursuant to the provisions of section (b) of this rule.

(b) Review panel procedures. Following receipt of the materials transmitted by the clerk pursuant to Rule 7(a), each member of the review panel will return a signed ballot to the clerk of the court by the return date listed on the ballot. The members of the review panel may vote to (1) deny the petition for review or (2) refer the petition

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to the full membership of the judicial council. The ballot will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition. In the event three or more members of the review panel disqualify themselves from participating in consideration of the petition, the clerk shall draw randomly the names of additional members of the judicial council to replace the disqualified members.

The petition for review shall be referred to the full membership of the judicial council upon the vote of any member of the review panel or at the request of any other member of the council and shall be placed on the agenda of a judicial council meeting upon the votes of at least two members of the judicial council. Any member of the review panel or of the remainder of the council who causes the petition to be referred to the full membership of the council shall send a brief statement of reasons to the clerk. All orders denying a petition for review shall state the names of the judges who participated in the matter, together with any disqualifications.

Upon referral of a petition for review to the full membership of the judicial council, the clerk of the court will send to each member of the judicial council not disqualified under Rule 17, a copy of the referring judge's brief statement and a ballot. Every member of the judicial council, other than the chief judge, will return a signed ballot to the clerk by the return date listed on the ballot. The members of the judicial council may vote to (1) deny the petition for review or (2) place the matter on the agenda of a judicial council meeting. The form will also provide an opportunity for the members of the judicial council to indicate that they have disqualified themselves from participating in consideration of the petition for review. Any judge voting to put the matter on the agenda of a judicial council meeting shall send a brief statement of reasons to all members of the judicial council and the clerk. The clerk will provide a copy of the statement to the judge whose conduct is the subject of the complaint. In the event of a judicial council meeting, the clerk will notify the complainant, the judge whose conduct is the subject of the complaint, the members of the judicial council, including the chief judge, and the circuit executive. The circuit executive will place the matter on the agenda of a judicial council meeting.

(c) Availability of documents. Upon request, the clerk will make available to any member of the judicial council, or the judge whose conduct is the subject of the complaint, any document from the file which was not sent pursuant to section (b) of this rule.

(d) Vote at meeting of the judicial council. If a petition is placed on the agenda of a meeting of the judicial council, council action may be taken by a majority of the members present and voting.

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(e) Rights of judge whose conduct is the subject of the complained.

(1) At any time after the filing of a petition for review by a complainant, the judge whose conduct is the subject of the complaint may file a written response with the clerk. The clerk will distribute copies of the response promptly to each member of the judicial council who is not disqualified, to the chief judge and to the complainant. The judge may not communicate with individual council

members about the matter, either orally or in writing.

(2) The judge whose conduct is the subject of the complaint will be provided copies of any communications that may be addressed by the complainant to members of the judicial council.

(f) Notice of council decision.

(1) The order of the judicial council, together with any accompanying memorandum in support of the order, will be provided to the complainant, the judge whose conduct is the subject of the complaint, and any other judge entitled to receive a copy of the complaint pursuant to Rule 3(a)(2).

(2) If the decision is unfavorable to the complainant, the complainant will be notified that 28 U.S.C. Section 352(c) provides for no further review of the decision.

(3) A memorandum supporting a council order will not include the name of the complainant or the name of the judge whose conduct is the subject of the complaint. If the order of the judicial council affirms the chief judge's decision, a supporting memorandum will be prepared only if the judicial council concludes there is a need to supplement the chief judge's explanation.

(g) Public availability of council decision. Materials related to the council's decision will be made public as provided in Rule 17.

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CHAPTER IV

**Investigation and Recommendation by
Special Committee**

RULE 9.

Appointment of Special Committee

(a) Membership. A special committee appointed pursuant to Rule 4(e) will consist of the chief judge of the circuit and equal numbers of circuit and district judges. See 28 U.S.C. Section 353(a)(1). If the complaint is made against a district court judge, a bankruptcy judge or a magistrate judge, the district judge members of the special committee will be from districts other than the district of the judge whose conduct is the subject of the complaint.

(b) Presiding Officer. At the time the chief judge appoints the special committee, he or she will designate one of its members (who may be the chief judge) to serve as presiding officer. If the chief judge designates another member of the special committee as the presiding officer, the chief judge may also delegate to that member the authority to direct the clerk of the court of appeals to issue subpoenas related to the proceedings of the special committee.

(c) Bankruptcy judge or magistrate judge as advisor. If the judicial officer whose conduct is the subject of the complaint is a bankruptcy judge or a magistrate judge, the chief judge may designate a bankruptcy judge or magistrate judge, as the case may be, to serve as advisor to the special committee. The chief judge will designate such an advisor if, within ten days of notification of the appointment of the special committee, the bankruptcy judge or magistrate judge whose conduct is the subject of the complaint requests the designation of an advisor. The advisor will not vote but will have the other privileges of a member of the special committee.

(d) Provision of documents. The chief judge will certify to each other member of the special committee and to the advisor, if any, copies of (1) the complaint form and statement of facts, and (2) any other documents on file pertaining to the complaint. See 28 U.S.C. Section 353(a)(2).

(e) Continuing qualification of special committee members. A member of the special committee who was qualified at the time of appointment may continue to serve on the special committee even though the member relinquishes the position of chief judge, active circuit judge or active district judge, as the case may be, but only

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if the member continues to hold office under Article III, Section 1 of the Constitution of the United States. See 28 U.S.C. Section 353(b).

(f) Inability of special committee member to serve. In the event a member of the special committee can no longer serve because of death, disability, disqualification, resignation, retirement from office, or other reason, the chief judge of the circuit may appoint a replacement member, either a circuit judge or a district judge, as the case may be. However, no special committee will function with only a single member, and the

quorum and voting requirements for a two-judge special committee will be applied as if the special committee had three members.

RULE 10.

Conduct of an Investigation

(a) Extent and methods to determined by the special committee. Each special committee will determine the extent of the investigation and the methods of conducting it that are appropriate in light of the allegations of the complainant. If, in the course of the investigation, the special committee has reason to believe that the judge whose conduct is the subject of the complaint may have engaged in misconduct that is beyond the scope of the complaint, the special committee may, with written notice to the judge whose conduct is the subject of the complaint, expand the scope of the investigation to encompass such misconduct.

(b) Criminal matters. In the event that the complaint alleges criminal conduct on the part of the judge, or in the event that the special committee becomes aware of possible criminal conduct, the special committee will consult with the appropriate prosecuting authorities to the extent permitted by 28 U.S.C. Section 360(a) in an effort to avoid compromising any criminal investigation. However, the special committee will make its own determination about the timing of its activities, having in mind the importance of ensuring the proper administration of the business of the courts.

(c) Staff. The special committee may arrange for staff assistance in the conduct of the investigation. It may use existing staff of the judicial branch or may arrange, through the Administrative Office of the United States Courts, for hiring of special staff to assist in the investigation.

(d) Delegation. The special committee may delegate duties in its discretion to subcommittees, to staff members, to individual committee members, or to an advisor

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under Rule 9(c). Th authority to exercise the special committee's subpoena powers may be delegated only to the presiding officer. In the case of failure to comply with a subpoena, the judicial council or special committee may institute a contempt proceeding consistent with 28 U.S.C. Section 332(d).

(e) Report. The special committee will file a comprehensive report of its investigation with the judicial council, including the findings of the investigation and the special committee's recommendations for necessary and appropriate action by the judicial

council. Any findings adverse to the judge whose conduct is the subject of the complaint will be based on evidence in the record. The report will be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of special committee members, and the record of any hearings held pursuant to Rule 11.

(f) Voting. All actions of the special committee will be by vote of a majority of all the members of the special committee.

Rule 11.

Conduct of Hearings by Special Committee

(a) Purpose of hearings. The special committee may hold hearings to take testimony and receive other evidence, to hear arguments, or both. If the special committee is investigating allegations against more than one judge it may, in its discretion, hold joint hearings or separate hearings.

(b) Notice to judge whose conduct is the subject of the complaint. The judge whose conduct is the subject of the complaint will be given adequate notice in writing of any hearing held, its purposes, the names of any witnesses whom the special committee intends to call, and the text of any statements that have been taken from witnesses. The judge whose conduct is the subject of the complaint may at any time suggest additional witnesses to the special committee.

(c) Special committee witnesses. All persons who are believed to have substantial information to offer will be called as witnesses. Such witnesses may include the complainant and the judge whose conduct is the subject of the complaint. The witnesses will be questioned by the special committee members, staff, or both. The judge will be afforded the opportunity to cross-examine special committee witnesses, personally or through counsel.

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(d) Witnesses called by the judge whose conduct is the subject of complaint. The judge whose conduct is the subject of the complaint may also call witnesses and may examine them personally or through counsel. Such witnesses may also be examined by special committee members, staff, or both.

(e) Witness fees. Witness fees will be paid as provided in 28 U.S.C. Section 1821.

(f) Rules of evidence; oath. The Federal Rules of Evidence will apply to any evidentiary hearing except to the extent that departures from the adversarial format of

a trial makes them inappropriate. All testimony will be given under oath or affirmation.

(g) Record and transcript. A record and transcript will be made of any hearing held.

Rule 12.

Rights of the Judge Whose Conduct is the Subject of the Complaint in Investigation

(a) Notice. The judge whose conduct is the subject of the complaint is entitled to written notice of the investigation (Rule 4(f)), to written notice of the expansion of the scope of an investigation (Rule 10(a)), and to written notice of any hearing (Rule 11(b)).

(b) Presentation of evidence. The judge whose conduct is the subject of the complaint is entitled to a hearing, and has the right to present evidence and to compel the attendance of witnesses and the production of documents at the hearing. Upon request of the judge whose conduct is the subject of the complaint, the chief judge or his or her designee will direct the clerk of the court of appeals to issue a subpoena in accordance with 28 U.S.C. Sec. 332(d)(1).

(c) Presentation of argument. The judge whose conduct is the subject of the complaint may submit written argument to the special committee at any time, and will be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(d) Attendance at the hearings. The judge whose conduct is the subject of the complaint will have the right to attend any hearing held by the special committee and to receive copies of the transcripts and any documents introduced, as well as to receive copies of any written argument submitted to the special committee by the complainant.

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(e) Receipt of the special committee's report. The judge whose conduct is the subject of the complaint will have the right to receive the report of the special committee at the time it is filed with the judicial council.

(f) Representation by counsel. The judge whose conduct is the subject of the complaint may be represented by counsel in the exercise of any of the rights enumerated in this rule. The costs of such representation may be borne by the United States as provided in Rule 14(h).

RULE 13.

Rights of Complainant in Investigation

(a) Notice. The complainant is entitled to written notice of the investigation as provided by Rule 4(f). Upon the filing of the special committee's report to the judicial council, the complainant will be notified that the report has been filed and is before the judicial council for decision. Although the complainant is not entitled to a copy of the report of the special committee, the judicial council may, in its discretion, release a copy of the report to the complainant.

(b) Opportunity to provide evidence. The complainant is entitled to be interviewed by a representative of the special committee. If it is believed that the complainant has substantial information to offer, the complainant will be called as a witness at a hearing.

(c) Presentation of argument. The complainant may submit written arguments to the special committee at any time. In the discretion of the special committee, the complainant may be permitted to offer oral argument.

(d) Representation by counsel. A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

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CHAPTER V

Judicial Council Consideration of Recommendations of Special Committee

RULE 14.

Action by Judicial Council

(a) Purpose of judicial council consideration. After receipt of the report of the special committee, the judicial council will determine whether to dismiss the complaint, conclude the proceeding on the ground that corrective action has been taken or is no longer necessary, refer the complaint to the Judicial Conference of the United States pursuant to 28 U.S.C. Section 354(b), or order corrective action to be taken

under 28 U.S.C. Section 354(a)(1), (2) and (3).

(b) Basis of judicial council action. Subject to the rights of the judge whose conduct is the subject of the complaint to submit argument to the judicial council as provided in Rule 15(a), the judicial council may take action on the basis of the report and the record of any hearings the special committee held. If the judicial council finds the report and record provide an inadequate basis for decision, it may order the special committee to conduct further investigation and make a further report or it may conduct such additional investigation as it deems appropriate.

(c) Dismissal. The judicial council will dismiss a complaint if it concludes –

(1) that the claimed conduct, even if true, is not “conduct prejudicial to the effective and expeditious administration of the business of the courts” and does not indicate that the judge whose conduct is the subject of the complaint suffers from a mental or physical disability resulting in inability to discharge the duties of office;

(2) that the complaint is directly related to the merits of a decision or procedural ruling;

(3) that the facts on which the complaint is based have not been demonstrated; or

(4) that, under the statute, the complaint is otherwise not appropriate for consideration.

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(d) Conclusion of proceeding on the basis of corrective action taken. The judicial council will conclude the proceeding if it determines that appropriate action has already been taken to remedy the problem identified in the complaint, or that intervening events have made such action unnecessary.

(e) Referral to the Judicial Conference of the United States. Pursuant to the provisions of 28 U.S.C. Sec. 354(b), the judicial council may, in its discretion, refer a complaint to the Judicial Conference of the United States, together with the record of any associated proceeding and its recommendation for appropriate action. In any case in which the judicial council determines, on the basis of a complaint and an investigation under these rules, or on the basis of information otherwise available to the judicial council, that a judge appointed to hold office during good behavior may have engaged in conduct (1) which might constitute one or more grounds for impeachment under Article II of the Constitution, or (2) which, in the interests of justice, is not amenable to resolution by the judicial council, the judicial council shall promptly

certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States. See 28 U.S.C. Section 354(b)(2). In the event the judicial council takes action under this subsection, it shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and the judge whose conduct is the subject of the action taken under this subsection.

(f) Order of corrective action. If the complaint is not disposed of under paragraphs (c) through (e) of this rule, the judicial council will take other action to assure the effective and expeditious administration of the business of the courts. Such actions may include, among other measures –

(1) ordering that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of the complaint;

(2) censuring or reprimanding the judge by means of private communication;

(3) censuring or reprimanding the judge by means of public announcement;

(4) in the case of a magistrate judge, directing the chief judge of the district court to take action specified by the judicial council, including the initiation of removal proceedings pursuant to 28 U.S.C. Section 631(i);

(5) in the case of a bankruptcy judge, removing the judge from office pursuant to 28 U.S.C. Section 152;

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(6) in the case of a circuit or district judge, requesting the judge to retire voluntarily with the provision (if necessary) that ordinary length-of-service requirements will be waived; and

(7) in the case of a circuit or district judge who is eligible to retire but does not do so, certifying the disability of the judge under 28 U.S.C. Section 372(b) so that an additional judge may be appointed.

(g) Combination of actions. Referral of a complaint to the Judicial Conference of the United States under section (e) or to a district court judge under subsection (f)(4) of this rule will not preclude the judicial council from simultaneously taking such other action under section (f) as is within its power.

(h) Recommendation as to fees. Upon the request of a judge whose conduct is the subject of a complaint, the judicial council may, if the complaint has been fully

dismissed, recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the judiciary, for those reasonable expenses, including attorneys' fees, incurred by the judge during the investigation, which would not have been incurred but for the requirements of 28 U.S.C. Chapter 16 and these rules.

(i) Notice of action of the judicial council. Council action will be by written order. Unless the judicial council finds that, for extraordinary reasons, it would be contrary to the interests of justice, the order will be accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for the judicial council's action. The memorandum will not include the name of the complainant or the name of the judge whose conduct is the subject of the complaint. The order and the supporting memorandum will be provided to the complainant, the judge whose conduct is the subject of the complaint and any judge entitled to receive a copy of the complaint pursuant to Rule 3(a)(2). However, if the complaint has been referred to the Judicial Conference of the United States pursuant to section (e) of this rule and the judicial council determines that disclosure would be contrary to the interests of justice, such disclosure need not be made. The complainant and the judge whose conduct is the subject of the complaint will be notified of any right to seek review of the judicial council's decision by the Judicial Conference of the United States and of the procedures for filing a petition for review.

(j) Public availability of judicial council action. Materials related to the judicial council's action will be made public pursuant to the provisions of Rule 17.

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(k) Allegations of criminal conduct. If a judicial council dismisses, solely for lack of jurisdiction under 28 U.S.C. Chapter 16, non-frivolous allegations of criminal conduct by a judge, the judicial council's order of dismissal shall inform the complainant that the dismissal does not prevent the complainant from bringing any allegation of criminal conduct to the attention of appropriate federal or state criminal authorities. If, in this situation, the allegations of criminal conduct were originally referred to the circuit by a Congressional committee or member of Congress, the judicial council – if no petition for review of the dismissal by the Judicial Council lies under 28 U.S.C. Section 357, or if no petition for review is filed within the thirty-day period specified by Rule 17(d) – shall notify the Congressional committee or member that the Judiciary has concluded that it lacks jurisdiction under Section 352.

RULE 15.

Procedures governing Judicial Council Consideration of a Special Committee's Report

(a) Rights of the judge whose conduct is the subject of the complaint. Within ten days after the filing of the report of a special committee, the judge whose conduct is the subject of the complaint may address a written response to all of the members of the judicial council. The judge will also be given an opportunity to present oral argument to the judicial council, personally or through counsel. The judge may not communicate with individual judicial council members about the matter, either orally or in writing.

(b) Conduct of additional investigation. If the judicial council decides to conduct additional investigation, the judge whose conduct is the subject of the complaint will be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The conduct of the investigation will be generally in accordance with the procedures set forth in Rules 10 through 13 for the conduct of an investigation by a special committee. However, if hearings are held, the council may limit testimony to avoid unnecessary repetition of testimony presented before the special committee.

(c) Voting. Judicial council action will be taken by a majority of those members of the council who are not disqualified, except that a decision to remove a bankruptcy judge requires a majority of all members of the judicial council.

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CHAPTER VI

Miscellaneous Rules

RULE 16.

Confidentiality

(a) General Rule. Consideration of a complaint by the chief judge of the circuit, a special committee, or the judicial council will be treated as confidential business, and information about such consideration will not be disclosed by any judge or employee of the judicial branch or any person who records or transcribes testimony except in accordance with these rules.

(b) Files. All files related to complaints, whether maintained by the clerk, the chief judge of the circuit, members of a special committee, members of the judicial council, or staff, whether or not the complaint was accepted for filing, will be maintained

separate and apart from other files and records, with appropriate security precautions to ensure confidentiality.

(c) Disclosure in memorandum of reasons. Memoranda supporting orders of the chief judge of the circuit or the judicial council, and dissenting opinions or separate statements of the members of the judicial council, may contain such information and exhibits as the authors deem appropriate, and such information and exhibits may be made public pursuant to Rule 17.

(d) Availability to Judicial Conference. In the event that a complaint is referred under Rule 14(e) to the Judicial Conference of the United States, the clerk will provide the Judicial Conference with copies of the report of the special committee and any other documents that were before the judicial council at the time of its decision. Upon request of the Judicial Conference or its Committee to Review Circuit Council Conduct and Disability Orders, in connection with their consideration of a referred complaint or a petition under 28 U.S.C. Sec. 357 for review of a judicial council order, the clerk will furnish any other records related to the investigation.

(e) Availability to the district court. In the event that the judicial council directs the initiation of proceedings for the removal of a magistrate judge under Rule 14(f)(3), the clerk will provide the chief judge of the district with copies of the report of the special committee and any other documents and records which were before the

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judicial council at the time of its decision. Upon request of the chief judge of the district court, the judicial council may authorize release of any other records relating to the investigation.

(f) Impeachment proceedings. The judicial council may release to the legislative branch any materials believed necessary to an impeachment investigation of a judge or a trial on articles of impeachment. See 28 U.S.C. Section 360(a)(2).

(g) Consent of the the judge whose conduct is the subject of the complaint. Any materials from the file may be disclosed to any person upon the written consent of both the judge whose conduct is the subject of the complaint and the chief judge of the circuit. See 28 U.S.C. Section 360(a)(3). The chief judge of the circuit may require that the identity of the complainant be shielded in any materials disclosed.

(h) Disclosure by the judicial council in special circumstances. The judicial council may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation,

to the extent that the judicial council concludes that such disclosure is justified by special circumstances and is not prohibited by 28 U.S.C. Section 360(a).

Such disclosure may be made to Judiciary researchers engaged in the study or evaluation of experience under Chapter 16 and related modes of judicial discipline, but only where such study or investigation has been specifically approved by the Judicial Conference of the United States or by the Judicial Conference Committee to Review Circuit Court Council and Disability Orders. The judicial council should take appropriate steps (to the extent the Judicial Conference or its Committee has not already done so) to shield the identities of the judge whose conduct is the subject of the complaint, the complainant, and witnesses from public disclosure, and may impose other appropriate safeguards to protect against the dissemination of confidential information.

(i) Disclosure of identity of the judge whose conduct is the subject of the complaint. Nothing in this rule shall preclude the judge whose conduct is the subject of the complaint from acknowledging that he or she is the judge referred to in documents made public pursuant to Rule 17.

(j) Assistance and consultation. Nothing in this rule precludes the chief judge or judicial council, for purposes of acting on a complaint filed under 28 U.S.C. Sec. 352, from seeking the assistance of qualified staff, or from consulting other judges who may be helpful in the process of complaint disposition.

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RULE 17.

Public Availability of Decisions

(a) General rule. A docket-sheet record of orders of the chief judge of the circuit and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council will be made public when final action on the complaint has been taken and it is no longer subject to review.

(1) If the complaint is finally disposed of without the appointment of a special committee, or if it is disposed of by judicial council order dismissing the complaint for reasons other than mootness or because intervening events have made action on the complaint unnecessary, the publicly available materials will not disclose the name of the judge whose conduct was the subject of the complaint without his or her consent.

(2) If the complaint is finally disposed of by censure or reprimand by means of private communication, the publicly available materials will not disclose either the name of the judge whose conduct was the subject of the complaint or the text of the reprimand or censure.

(3) If the complaint is finally disposed of by any other action taken pursuant to Rule 14(d) or (f) except dismissal because intervening events have made action on the complaint unnecessary, the text of the dispositive order will be included in the materials made public, and the name of the judge will be disclosed.

(4) If the complaint is dismissed as moot, or because intervening events have made action on the complaint unnecessary, at any time after the appointment of a special committee, the judicial council will determine whether the name of the judge whose conduct was the subject of the complaint is to be disclosed.

The name of the complainant will not be disclosed in materials made public under this rule unless the chief judge of the circuit orders disclosure.

(b) Manner of making public. The records referred to in paragraph (a) will be made public by placing them in a publicly accessible file in the office of the clerk of the U.S. Court of Appeals for the Eighth Circuit, 111 S. 10th Street, St. Louis, Missouri 63102. The clerk will send copies of the publicly available materials to the Federal

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Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C. 20002, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge of the circuit may direct that they be published.

(c) Decisions of the Judicial Conference Standing Committee. To the extent consistent with the policy of the Judicial Conference Committee to Review Circuit Court Council Conduct and Disability Orders, opinions of that committee about complaints arising from the Eighth Circuit will also be available to the public in the clerk's office of the United States Court of Appeals for the Eighth Circuit.

(d) Complaints referred to the Judicial Conference of the United States. If a complaint is referred to the Judicial Conference of the United States pursuant to Rule 14(e), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference.

RULE 18.

Disqualification

(a) Complainant. If the complaint is filed by a judge, that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant. A chief judge who has identified a complaint under Rule 2(j) will not be automatically disqualified from participating in the consideration of the complaint but may consider in his or her discretion whether the circumstances warrant disqualification.

(b) Judge whose conduct is the subject of the complaint. A judge whose conduct is the subject of a complaint will be disqualified from participating in any consideration of the complaint except to the extent that these rules provide for participation by a judge whose conduct is the subject of the complaint.

(c) Disqualification of chief judge on consideration of a petition for review of a chief judge's order. If a petition for review of a chief judge's order dismissing a complaint or concluding a proceeding is filed with the judicial council pursuant to Rule 5, the chief judge will not participate in the judicial council's consideration of the petition. In such a case, the chief judge may address a written communication to all of the members of the judicial council, with copies provided to the complainant

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and the judge whose conduct is the subject of the complaint. The chief judge may not communicate with individual judicial council members about the matter, either orally or in writing.

(d) Member of special committee not disqualified. A member of the judicial council who is appointed to a special committee will not be disqualified from participating in the judicial council's consideration of the special committee's report.

(e) Judge under investigation. Upon appointment of a special committee, the judge whose conduct is the subject of the complaint will automatically be disqualified from serving on (1) any special committee appointed under Rule 4(e), (2) the judicial council of the circuit, (3) the Judicial Conference of the United States, and (4) the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States. The disqualification will continue until all proceedings regarding the complaint are finally terminated, with no further right of review.

(f) Substitute for disqualified chief judge. If the chief judge of the circuit is disqualified from participating in consideration of the complaint, the duties and responsibilities of the chief judge under these rules will be assigned to the circuit judge in regular service who is the most senior in date of commission of those not

disqualified. If all circuit judges in regular service are disqualified, the judicial council may determine whether to refer the complaint to a circuit judge from another circuit pursuant to 28 U.S.C. Sec. 291(a), or whether it is necessary, appropriate and in the interest of sound judicial administration to permit the chief judge to dispose of the complaint on the merits. Members of the judicial council who are named in the complaint may participate in this determination if necessary to obtain a quorum of the judicial council.

(g) Judicial council action where multiple judges are disqualified. Notwithstanding any other provision in these rules to the contrary, a member of the judicial council who is the subject of a complaint may participate in the disposition thereof, if (1) participation by members who are subjects of the complaint is necessary to obtain a quorum of the judicial council, and (2) the judicial council votes that it is necessary, appropriate and in the interests of sound judicial administration that such complained against members be eligible to act. Members of the judicial council who are subjects of the complaint may participate in this determination if necessary to obtain a quorum of the judicial council. Under no circumstances, however, shall the judge who acted as chief judge of the circuit in ruling on the complaint under Rule 4 be permitted to participate in this determination.

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RULE 19.

Withdrawal of Complaints and Petitions for Review

(a) Complaint pending before chief judge. A complaint that is before the chief judge for a decision under Rule 4 may be withdrawn by the complainant with the consent of the chief judge.

(b) Complaint pending before special committee or judicial council. After a complaint has been referred to a special committee for investigation, the complaint may be withdrawn by the complainant only with the consent of both (1) the judge whose conduct is the subject of the complaint, and (2) the special committee (before its report has been filed) or the judicial council.

(c) Petition for review of chief judge's disposition. A petition to the judicial council for review of the chief judge's disposition of a complaint may be withdrawn by the petitioner at any time before the judicial council acts on the petition.

RULE 20.

Availability of Other Procedures

The availability of the complaint procedures under these rules and 28 U.S.C. Section 351, et seq., will not preclude the chief judge of the circuit or the judicial council of the circuit from considering any information that may come to their attention suggesting that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge all of the duties of office by reason of disability.

RULE 21.

Availability of Rules and Forms

These rules and copies of the complaint form prescribed by Rule 2 will be available without charge in the office of the clerk of the court of appeals as set forth in Rule 2 and in each office of the clerk of the bankruptcy and district courts in this circuit. The information will also be available on the web site maintained by the clerk

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of the court of appeals at www.ca8.uscourts.gov . The clerk will will also post a copy of the commentary on the Illustrative Rules prepared by the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders on the web site.

RULE 22.

Effective Date

These rules apply to complaints filed after October 23, 2003. The handling of complaints filed before that date will be governed by the rules previously in effect.

RULE 23.

Advisory Committee

The advisory committee appointed by the U.S. Court of Appeals for the Eighth Circuit for the study of rules of practice and internal operating procedures shall also constitute the advisory committee for the study of these rules, as provided by 28 U.S.C. Section 2077(b), and shall make any appropriate recommendations to the circuit judicial council concerning these rules.

I hereby certify that the Eighth Circuit Judicial Council adopted the foregoing Rules Governing Complaints of Judicial Misconduct and Disability on October 23, 2003.

/s/ _____
Millie Adams
Circuit Executive